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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

PACCAR FINANCIAL CORP., dba
PACCAR LEASING COMPANY, a
Washington corporation,

Plaintiff,

v.

RUN-RITE INDUSTRIES, LLC, a Nevada
limited liability company; and
GUTTERMAN'S SUPPLY
CORPORATION OF AMERICA, an Oregon
corporation,

Defendants

Case No. 3:19-cv-01165-HZ

DEFENDANTS' MOTION TO DISMISS

Request for Oral Argument

LR 7-1 CERTIFICATION OF CONFERRAL

Counsel for Defendants conferred with counsel for Plaintiff via telephone and through multiple email communications. The parties were unable to resolve the disputed issues.

MOTION TO DISMISS

Defendants Run-Rite Industries, LLC ("Run-Rite") and Gutterman's Supply Corporation of America ("Gutterman's") hereby move to dismiss the *Complaint* filed by Plaintiff Paccar Financial Corporation d/b/a Paccar Leasing Company ("Paccar") for failure to adequately plead federal subject matter jurisdiction. This motion is supported by the points and authorities below

and by the pleadings and record on file with the Court.

LEGAL ARGUMENT

Paccar's *Complaint* rests entirely on purported diversity jurisdiction, as it does not plead or assert federal question jurisdiction or any federal law claim or cause of action. Paccar's *Complaint* (§§ 2, 4) alleges that Run-Rite is a limited liability company or LLC. However, Paccar's *Complaint* nowhere identifies the members or owners of the Run-Rite LLC, nor their residency or citizenship. Thus, Paccar has failed to plead facts supporting or showing diversity jurisdiction, as required by Fed. R. Civ. P. 8(a)(1).

Fed. R. Civ. P. 8(a)(1) requires the plaintiff to plead "a short and plain statement of the grounds for the court's jurisdiction." When a limited liability company is a party, the complaint must identify the constituent members and their residency or citizenship. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006); *Carden v. Arkoma Associates*, 494 U.S. 185, 195–196 (1990); *see also* *McDaniel v. B.G.G.OO, LLC*, 2011 U.S. Dist. LEXIS 161878 (D. Or. 2011) (district court *sua sponte* challenged subject matter jurisdiction because plaintiff did "not allege the citizenship of each LLC member")

For purposes of diversity jurisdiction, a limited liability company is a citizen of any state of which any member of the company is a citizen. *3123 SMB LLC V. Horn*, 880 F.3d 461, 465 (9th Cir. 2018); *Rolling Greens MHP, L.P. v. Comcast SCH Holdings, LLC*, 374 F.3d 1020, 1022 (11th Cir. 2004); *SFF-TIR, LLC v. Stephenson*, 2017 U.S. Dist. LEXIS 62790 (N.D. Ok. April 25, 2017); *see also* 13F. Charles Allen Miller et al., *Federal Practice & Procedure: Jurisdiction* § 3630 (3rd ed. 2017); *Gen. Tech. Applications, Inc. v. Exro LTDA*, 388 F.3d 114, 121 (4th Cir. 2004); *Harvey v. Grey Wolf Drilling Co.*, 592 F.3d 1077, 1080 (5th Cir. 2008).

Lack of subject matter jurisdiction is a defect which can be raised at any time, including by the Court *sua sponte* or of its own volition. *E.g., McDaniel*, 2011 U.S. Dist. LEXIS 161878. Each court has a responsibility to review its own subject matter jurisdiction or the subject matter jurisdiction of the court whose decision it is reviewing. *Rolling Greens*, 374 F.3d at 1021.

Here, Plaintiff's Complaint does not plead or reveal the identities, residency or citizenship of the members of the Run-Rite LLC defendant. No federal law claim is stated to support federal question jurisdiction. No mention of federal question jurisdiction is made in Plaintiff's *Complaint*. The *Complaint* does not provide or contain sufficient facts to determine whether complete diversity of citizenship exists, and Plaintiff therefore has not sufficiently demonstrated or pled the existence of subject matter jurisdiction. *Rolling Greens*, 374 F.3d at 1021–1022.

CONCLUSION

For the reasons stated above, Plaintiff's *Complaint* should be dismissed for failing to plead or allege sufficient facts to establish diversity jurisdiction or any other basis for federal subject matter jurisdiction.

Dated: September 9, 2019

CHENOWETH LAW GROUP, PC

/s/ Brooks M. Foster

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Attorneys for Defendants

DECLARATION OF SERVICE

I hereby certify that I served the foregoing **DEFENDANTS' MOTION TO DISMISS** on the following:

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by the following method(s):

- xx by **e-service / e-File & Serve** a full, true and correct copy thereof to the parties at the email addresses registered with the Court.
- xx by **emailing** a full, true and correct copy thereof to the parties at the email addresses shown above, which are the last-known email addresses of the parties, on the date set forth below.
- by **mailing** a full, true and correct copy thereof in a sealed, first-class, postage pre-paid envelope, addressed to the last-known address of the parties as shown above, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated: September 9, 2019

CHENOWETH LAW GROUP, PC

/s/ Ethan Jones
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DECLARATION OF SERVICE